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IN THE

Supreme Court of the United States

October Term, 1966

No. 331

ISAAC A. TAFT,

Petitioner,

—versus—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

SAMUEL S. MITCHELL
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Raleigh, North Carolina
(MITCHELL AND MURPHY, *Of Counsel*)
Attorneys for Petitioner

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IN THE

Supreme Court of the United States

October Term, 1966

No. .....

ISAAC A. TAFT,

Petitioner,

—versus—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

To the Justices of the Supreme Court of the United States:

The petitioner herein prays that a writ of certiorari issue to review the final Judgment of the United States Court of Appeals for the Fourth Circuit which was entered on the 11th day of May, 1966, and which affirmed the Judgment of the United States District Court, Eastern District of North Carolina, Washington Division. The Judgment affirmed by the United States Court of Appeals was a prison term of three years upon a conviction in the District Court for alleged removal of non-tax paid whiskey in violation of Title 26, U. S. C., Section 7206(4).

Opinion Below

The Opinion of the United States Court of Appeals for the Fourth Circuit has not, as of this writing, been reported. ——F. 2d —— (C. A. 4th 1966). A copy of said Opinion is attached to this Petition as Appendix A.

Jurisdiction

The Opinion and Judgment of the United States Court of Appeals for the Fourth Circuit was entered on May 11, 1966. On June 10, 1966, the Court entered an Order, pursuant to Rule 22(2) of the Revised Rules of this Court, granting petitioner until the 9th day of July, 1966, within which time to file the instant Petition. The jurisdiction of this Court is invoked under Title 28 U. S. C. 1254 (2).

Questions Presented

Defendant noted his appeal to the Court of Appeals without the aid of his trial counsel. He initiated his appeal efforts by writing a letter to the District Judge while he was in custody. (Appendix F). Judgment was entered against defendant on the 2nd day of November, 1965, and he remained in custody until he filed an appeal in proper form (Appendix G), on the 12th day of November, 1965, and posted an appearance bond in the amount of Five Thousand Dollars (Appendix H). His letter to the District Judge indicated his desire to appeal and his need of legal counsel for the noting and handling of an appeal. In view of defendant's incarceration for ten days after verdict and the fact that he had no counsel during such

period of time, defendant's failure to file Motions under Rule 33 (18 U. S. C.; Rule 33), setting up the question on this appeal is understandable. However, the questions presented on his appeal to the Court of Appeals are questions which go to the heart of trial by jury and a defendant's right to defend himself and they are questions which the Court of Appeals observe *sua sponte* and pursuant to Rules 37, 39 and 52 (b) of the Rules of Criminal Procedure. These questions, as presented to the Court of Appeals, are as follows:

> "1. Did the deliberate destruction of the alleged whiskey by the federal agents, upon the arresting of defendant, violate defendant's right to a trial by jury and right of confrontation?"
>
> "2. Did the deliberate destruction of the alleged whiskey by the federal agents, upon the arresting of defendant, violate defendant's Fifth Amendment right and opportunity to prepare defense to the charge against him?"

These same questions are among the questions here presented, along with questions pertaining to the application and interpretation of 26 U. S. C. 5609 and so much of the statute as reads: "Any destruction under this subsection shall be in the presence of at least one credible witness." The questions pertaining to the statute, which is quoted from above, are as follows:

> 3. Will a prosecution lie under Title 26, United States Code, Section 7206 (4), for removal of non-tax-paid whiskey where all of the alleged whiskey is immediately destroyed upon defendant's arrest and

before indictment or arraignment and where there was no "credible witness" present, as contemplated by 26 U. S. C. 5609?

4. In view of North Carolina General Statutes, Chapter 18, Sections 6, 6.1, 13, and 48, which enjoin North Carolina State officers from destruction of alleged non-tax-paid whiskey prior to trial in state Courts and which restrain North Carolina State officers, under criminal sanction, from referring non-tax-paid whiskey cases to Courts other than State Courts, can a North Carolina A. B. C. officer be a "credible witness," within the meaning of 26 U. S. C. 5609, to a "federal" seizure, arrest and whiskey destruction in which he fully participates?

All of these questions are the questions here presented.

Statements of Facts

Federal agents Spight, Blettner and Pitt County ABC agent Taylor testified, substantially, as follows:

On the night of June 4, 1965, at about 10:00 p. m., they went to the vicinity of the home of one James Johnson, a co-defendant in the District Court, which home is located seven or eight miles west of Greenville in Pitt County, North Carolina. None of the agents had a search warrant. They stationed themselves at various points around the Johnson residence, with Pitt County ABC agent Taylor and federal agent Spight in a cornfield immediately to the rear of the Johnson residence. These two officers were about thirty-five steps from the rear of the dwelling in knee high corn. Federal agents Blettner and Ellis were

stationed on the east side of the house, about fifteen or twenty yards from the house behind a tobacco barn.

At about 11:00 p. m., the federal and state agents said that they saw a 1957 red and white Chevrolet come into the yard with its headlights off and which was driven to the back of the yard. The agents said that they saw an individual moving but could not determine who they were; that they could hear the sound of heavy objects bumping inside and cardboard boxes being opened; that they could smell the odor of whiskey inclosed in jars coming from the direction of the Johnson dwelling; that no jars were broken until the agents broke the jars after defendant's arrest; that it is possible to smell whiskey in a closed jar from a house at a distance of thirty-five paces. Pitt County ABC agent Taylor testified that defendant was arrested placing a case of whiskey in the front seat of the automobile and that he had brought it out of the house.

The agents stated that they seized 66 gallons of whiskey and none of the whiskey seized had revenue stamps thereon. The whiskey was in half gallon fruit jars—some three cases were still in the house, the rest in the car. They testified that they destroyed the whiskey immediately after seizure, at 11:45 p. m. (see Appendix I, this Brief).

No whiskey or container was presented to the District Court nor was any reason given by the agents as to why they did not preserve some or a part of what they said was whiskey and at least a container which they said did not have stamps upon it. [See *United States* v. *Romano*, 330 F. 2d 566 (C. A. Conn. 1964).] The Government did not offer any "credible witness" to the alleged destruction of whiskey and containers (26 U. S. C. 5609).

How the Federal Questions Are Presented

While defendant did not raise questions in the District Court pertaining to the destruction of whiskey and containers prior to arraignment and pertaining to the nonproduction of a "credible witness" at trial, defendant urged these questions in the United States Court of Appeals pursuant to Rules 33, 37, 39, and 52(b).

All of the "raiders" and persons present were federal agents with the exception of Pitt County ABC agent Taylor. State agent Taylor, as he is hereafter referred to, fully participated in the seizure, arrest, and destruction and stated his role as follows:

"Direct Examination by Mr. Bass:

Q. Will you state your name and occupation for the record, please sir? A. Walter Taylor, ABC officer, Pitt County.

Q. And how long have you been employed in this capacity, Mr. Taylor? A. Ten years.

Q. Where do you live? A. Greenville.

Q. Greenville is your home? A. Yes, sir" (Transcript, page 31).

* * * * *

(Witness Taylor, State Agent, on Direct Examination)

"I was on the right side, Investigator Spight was on the left side. And at that time, Isaac Taft, whom I have known for about ten years, came out of this lighted doorway to the back of the car around to my side of the car, with a case the size of half gallon fruit jars, and placed it in the front seat of the automobile.

At that time, I jumped from the front of the automobile and grabbed Isaac by his belt and put my light

in his face and told him he was under arrest" (Transcript, page 33).

• • • • •

(Witness Taylor, State Agent, on Direct Examination)

"Q. Did you examine the cases that were in the car? A. Yes, sir.

Q. Were they half gallon fruit jar cases? A. Yes, sir. Containing non-tax paid whiskey.

Q. Did you examine the contents of the cases? A. Yes, sir, I did.

Q. What was in them? A. Non-tax paid whiskey.

Q. You took it out and examined it? A. Yes, sir, and destroyed it.

Q. And helped destroy it? A. Yes, sir. There in the edge of the yard, yes, sir. There was three more cases in the room that—

Q. How did you destroy it, by breaking it? A. Yes, sir.

Q. All of the cases—I believe you testified, sir, eight cases which were in the car, were all of them filled with jars that had non-tax paid liquor in them? A. Yes, sir.

Q. Each and every jar was filled? A. Yes, sir.

Q. All right, sir.

Mr. Bass: No more questions.

Thank you, sir (Transcript, pages 35-36).

Reasons for Granting the Writ

The instant case presents several fundamental and reoccurring problems and issues in the administration of the Federal Criminal Code in general and in the application of Title 26, United States Code, Section 5609 in particular.

This case also presents a complexity of constitutional issues pertaining to Fifth and Sixth Amendment protection of defendants on trial in federal courts. And in view of the role of state agent Taylor in arresting defendant, in aiding in the destruction of the alleged whiskey, and in referring the prosecution against defendant to the United States District Court—all in violation of state law [see North Carolina General Statute, Chapter 18, Sections 6, 6.1, 13, and 48], this case presents a delicate issue touching state and federal relationship, insofar as it presents the question of whether a participating and cooperating state agent in a federal raid should be adjudged a "credible witness" in a federal prosecution, where the participating and cooperating state agent was in open and flagrant violation of state law. Compare the rule of exclusion applicable to evidence obtained by a state agent which, if obtained by a federal agent, would have been inadmissible in a federal prosecution. *Staples* v. *United States,* 320 F. 2d 817 (C. A. 5th 1963); *United States* v. *Happs,* 331 F. 2d 332 (C. A. 4th 1964); *Elkins* v. *United States,* 364 U. S. 206, 80 S. Ct. 1437, 4 L. ed. 1669 (1960); *Gambino* v. *United States,* 275 U. S. 310, 48 S. Ct. 137, 72 L. ed. 293 (1927); *Hall* v. *United States,* 41 F. 2d 54 (C. C. A. 9th 1930). See, also, case holding that "whenever possible, that a State must not be thwarted in its policy", *Tank Truck Rental, Inc.* v. *Commissioner of Internal Revenue,* 356 U. S. 30, 2 L. ed. 2d 562, 78 S. Ct. 507 (1958). *Bowles* v. *Texas Liquor Control Board,* 146 F. 2d 155 (C. A. 4th 1944). Because of these matters, among others, the instant case is well suited for this Court's discretionary jurisdiction on Writ of Certiorari as is indicated in succeeding paragraphs.

In regard to the summary destruction of illegal, alcoholic spirits, 26 U. S. C. 5609 provides:

> ". . . In the case of seizure elsewhere than on premises qualified under this chapter of any unregistered still, distilling or fermenting equipment or apparatus, or distilling or fermenting material, for any offense involving forfeiture of the same, where it shall be impracticable to remove the same to a place of safe storage from the place where seized, the seizing officer is authorized to destroy the same. In the case of seizure, other than on premises qualified under this chapter or in transit thereto or therefrom, of any distilled spirits on which the tax has not been paid or determined, for any offense involving forfeiture of the same, the seizing officer is authorized to destroy the distilled spirits forthwith. *Any destruction under this subsection shall be in the presence of at least one credible witness.* The seizing officer shall make such report of said seizure and destruction and take such samples as the Secretary or his delegate may require" (emphasis added).

The evidence in the instant case leaves no doubt but that the government's seizures and destruction in this case failed to comply with 26 U. S. C. 5609, in that, destruction was not in the presence of a "credible witness." See Appendix I, this Petition. The government agents, William R. Spight and P. H. Blettner in particular, testified that the whiskey was destroyed immediately after seizure and no witness testified as to the presence of a "credible witness" or to the taking of samples. Indeed, the evidence excludes the serious contention that the agents *may have*

complied with the statute in the respects mentioned unless a state ABC agent is a "credible witness" within the meaning of the statute.

Had the state agent Taylor complied with state statute in the arrest of defendant and in his destruction of the alleged whiskey, defendant would have been tried in the state court and the alleged whiskey would have been preserved pursuant to state statute, until after defendant's trial in state court. North Carolina General Statute 18-6.1 reads:

> "All members of the State Highway Patrol and other State and local law enforcing officers shall, whenever seizing any vehicle on account of the unlawful transportation of intoxicating beverages, or equipment or materials designed or intended for use in the manufacture of intoxicating liquor, or making arrests of persons on account of same, refer the cases to the State court having jurisdiction thereof, to be determined by such State court in accordance with the law of this State. Any such officer who shall, in violation of this section, refer such cases to courts of another jurisdiction, shall be guilty of misfeasance in office and subject to a fine of one hundred dollars ($100.00)."

North Carolina General Statute 18-48 reads as follows:

> "It shall be unlawful for any firm, person or corporation to have in his or its possession any alcoholic beverages as defined herein upon which the taxes imposed by the laws of Congress of the United States or by the laws of this State, have not been paid and any person convicted of the violation of this section

shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court and the alcoholic beverage shall be seized and forfeited, together with any vehicle, vessel, aeroplane or other equipment used in the transportation and to carry the said alcoholic beverages, and the procedure pointed out in section 18-6 are hereby declared to be in full force and effect in any of the counties of the State which shall operate under the provisions of this article, and the possession of such alcoholic beverages in a container which does not bear either a revenue stamp of the federal government or a stamp of any of the county boards of the State of North Carolina shall constitute prima facie evidence of the violation of this section. The willful manufacturing or causing to be manufactured or the willful possession of any counterfeit or unauthorized beverage control stamps shall be unlawful and punishable as a misdemeanor."

Finally, North Carolina General Statute 18-6 reads, in part, as follows:

"... Whenever intoxicating liquor, or equipment or materials designed or intended for use in the manufacture of intoxicating liquor, transported or possessed illegally, shall be seized by an officer, he shall take possession of the vehicle and team or automobile, boat, air or watercraft, or any other conveyance, and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested, under the provisions of this article, in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon execu-

tion by him of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide the judgment of the court. All liquor seized under this section shall be held and shall, upon the acquittal of the person so charged, be returned to the established owner, and shall within ten days upon conviction or default of appearance of such person be destroyed; provided, that any tax-paid liquor so seized shall within ten days be turned over to the board of county commissioners, which shall within ninety days from the receipt thereof turn it over to hospitals for medicinal purposes or sell it to legalized alcoholic beverage control stores within the State of North Carolina, the proceeds of such sale being placed in the school fund of the county in which such seizure was made, or destroy it."

Thus, it is apparent that the state of North Carolina has fully contemplated and provided that an arrested defendant should have full and complete rights of unfettered trial by jury and all of the constitutional safe-guards before trial or conviction as are promised to a defendant in a federal prosecution by the Sixth and Fifth Amendments to the Federal Constitution.

If "credible witness" in 26 U. S. C. 5609 is applicable to state agent Taylor, then the statute presents the anomalous and incredible circumstance of a state agent being allowed to employ the federal courts to abridge the Sixth Amendment rights to a jury trial and confrontation and

the Fifth Amendment rights to prepare and make defense. After the destruction of all of the alleged whiskey, the Government case presented to the jury the solitary question of the credibility of the Government's witnesses and reduced the machinery of trial by jury to one of previous trial by government and cooperating state agents, with subsequent rubber stamping by court and jury. Compare *Turner* v. *State of Louisiana,* 379 U. S. 466, 85 S. Ct. 546, 13 L. ed. 2d 424 (1965); *Patton* v. *United States,* 281 U. S. 276, 50 S. Ct. 253, 74 L. ed. 854 (1930); *Brooks* v. *United States,* 240 F. 2d 905 (C. A. 5th 1957). This was an effective and patent abridgment of the jury trial which defendant had painstakingly sought. Moreover, the Sixth Amendment guarantees a defendant the right of confrontation which includes the right of cross examination. *United States* v. *Cardillo,* 316 F. 2d 606 (C. A. 2d 1963); *Pointer* v. *Texas,* 380 U. S. 400, 85 S. Ct. 1065, 13 L. ed. 923 (1965). It is respectfully submitted that this right is abridged where federal agents are permitted to testify of seizures without warrants and of destruction of non-tax paid whiskey before arraignment of a defendant. In such a case a government witness has insulated himself from cross examination as fully as if he had pleaded the Fifth Amendment on cross examination (*United States* v. *Cardillo, supra*), or as though his testimony at trial were represented by a transcript in his absence (*Pointer* v. *Texas, supra*). A defendant can never effectively cross-examine a witness where the witness has completely destroyed the alleged contraband before trial. Nor can a defendant, in such circumstance, adequately prepare a defense where the composition and labeling of a material substance is an issue. Moreover, the agent's testimony of his summary destruction of non-tax paid whiskey, which he does not

exhibit to the jury, is well calculated to even withdraw from the jury's serious consideration the question of the credibility of the government witness and to make the jury a rubber stamp of a "trial" conducted by agents upon the premises.

While it is apparent that Congress was advertent to the effect of summary destruction of alleged whiskey upon the prosecution of a defendant in the United States District Court, in that, Congress provided substitute objectivity through the instrument of a "credible witness", it is respectfully submitted that the question of who is a "credible witness", as contemplated by the statute, is of such moment as to justify this Court's attention. The implications involved in construction and interpretation of this statute, as they pertain to the constitutional rights of a defendant on trial, as they pertain to the delicate and often strained relationship between state and federal law, as they pertain to the enforcement of the Federal Internal Revenue Code, and as they pertain to the conduct of similar trials in the several District Courts, are of such magnitude as to merit decision in the instant case by this Court.

Again, the legislative necessity that federal officers and agents obey legislative and procedural mandates in applying the criminal law has often been underscored by this Court, *Mallory* v. *United States,* 354 U. S. 449, 1 L. ed. 2d 1479, 77 S. Ct. 1356 (1957); *McNabb* v. *United States,* 318 U. S. 332, 87 L. ed. 819, 63 S. Ct. 608 (1943). In the *McNabb* case, *supra,* which dealt with illegal detention of a person charged, this Court emphasized the reasons underlining the necessity for compliance by federal officers with procedural mandates as follows:

"The purpose of this impressively pervasive requirement of criminal procedure is plain. A democratic society, in which respect for the dignity of all men is central, naturally guards against the misuse of the law enforcement process. Zeal in tracking down crime is not in itself an assurance of soberness of judgment. Disinterestedness in law enforcement does not alone prevent disregard of cherished liberties. Experience has therefore counseled that safeguards must be provided against the dangers of the overzealous as well as the despotic. The lawful instruments of the criminal law cannot be entrusted to a single functionary. The complicated process of criminal justice is therefore divided into different parts, responsibility for which is separately vested in the various participants upon whom the criminal law relies for its vindication. Legislation such as this, requiring that the police must with reasonable promptness show legal cause for detaining arrested persons, constitutes an important safeguard —not only in assuring protection for the innocent but also in securing conviction of the guilty by methods that commend themselves to a progressive and self-confident society."

The Opinion of the Court below takes no notice of these salutary principles. Indeed the Courts of Appeals appear never to have faced the problems involved as pertain to destruction under 26 U. S. C. 5609 in the presence of a "credible witness". But rather the Courts of Appeals have seen the problem as one involving the "best evidence" rule. See the following cases: *Atkins* v. *United States,* 240 F. 2d 849 (C. A. 5th 1957); *Burney* v. *United States,* 339 F. 2d 91 (C. A. 5th 1964); *Chandler* v. *United States,* 318 F. 2d

357 (C. A. 10th 1963); *Dicks* v. *United States,* 253 F. 2d 713 (C. A. 5th 1958); *Middleton* v. *United States,* 249 F. 2d 719 (C. A. 4th 1957); *Palmquist* v. *United States,* 283 F. 2d 758 (C. A. 5th 1960); *West* v. *United States,* 259 F. 2d 868 (C. A. 5th 1958). The tendency of the Courts of Appeals to view the issues in this case as one involving the "best evidence" rule is so entrenched as to require decision by this Court. See *United States* v. *Romano,* 330 F. 2d 566 (C. A. 2d 1964).

CONCLUSION

Wherefore, for the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX "A"

Opinion of Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

(Argued May 3, 1966 Decided May 11, 1966.)

No. 10366

UNITED STATES OF AMERICA,

Appellee,

—v.—

ISAAC A. TAFT,

Appellant.

Before:

HAYNSWORTH, *Chief Judge,*
BRYAN, *Circuit Judge* and FIELD, *District Judge.*

Appeal from the United States District Court for the Eastern District of North Carolina at Washington. John D. Larkins, Jr., *District Judge.*

ROMALLUS O. MURPHY and SAMUEL S. MITCHELL (Mitchell & Murphy, on Brief), *for Appellant.*

JERALD L. BASS, Assistant United States Attorney, Robert H. Cowen, United States Attorney (on Brief), *for Appellee.*

Appendix "A"

Opinion of Court of Appeals

PER CURIAM:

Upon consideration of the record and the arguments of counsel, on brief and orally, the court finds no substance in the errors assigned for reversal of the conviction of Isaac A. Taft. Accordingly, the judgment now on review on his appeal will be affirmed.

Affirmed.

APPENDIX "B"

Complaint

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

Commissioner's Docket No. 2

Case No. 99

UNITED STATES OF AMERICA,

—v.—

ISAAC A. TAFT, n-33, alias ISAAC TAFT, 201 Stutz St., Greenville, JAMES JOHNSON, n-45, Rt. 4, Greenville, N. C.

COMPLAINT FOR VIOLATION OF U. S. C. Title 26 Section 7206(4)

Before Jeanette H. Thomas, Greenville, N. C.

The undersigned complainant being duly sworn states:

That on or about June 4, 1965, at Rt. 4, Greenville, Pitt County in the Eastern District of N. C. Isaac A. Taft and James Johnson did remove and conceal 66 gallons of non-tax paid whiskey.

And the complainant states that this complaint is based on personal knowledge of witnesses.

And the complainant further states that he believes that P. H. Blettner, Jr., Inv. A&TTD, New Bern, N. C.; William

Appendix "B"
Complaint

Spight, Inv. A&TTD, Williamston, N. C.; Cecil Bullock and Wiley Craft, ABC Officers, Martin County, N. C. are material witnesses in relation to this charge.

/s/ Jacs M. Layne
Inv. A&TTD

Sworn to before me, and subscribed in my presence, June 5, 1965.

/s/ Jeanette H. Thomas
United States Commissioner

A True Copy, Teste:

Samuel A. Howard, Clerk

By /s/ William A. Kopp, Jr.
Deputy Clerk

APPENDIX "C"

Indictment

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

WASHINGTON DIVISION FALL TERM 1965

No. 2970-Cr.

UNITED STATES OF AMERICA,

—VS.—

JAMES JOHNSON; ISAAC A. TAFT.

INDICTMENT

(Title 26, U. S. C., Sec. 7206(4))

The Grand Jury charges:

On or about the 4th day of June 1965, in the Eastern District of North Carolina, JAMES JOHNSON and ISAAC A. TAFT removed, deposited, and concealed, and was concerned in removing, depositing and concealing SIXTY-SIX (66) gallons of nontaxpaid whiskey, in respect whereof a tax is imposed, with intent to evade and to defeat the assessment or collection of said tax by United States of America, in

violation of the provisions of Title 26, U. S. C., Sec. 7206 (4).

A TRUE BILL

/s/ MACH D. PERRY, JR.
Foreman

/s/ GERALD L. BASS
Asst. United States Attorney

A True Copy, Teste:

SAMUEL A. HOWARD, Clerk

By /s/ WILLIAM A. KOPP, JR.
Deputy Clerk

APPENDIX "D"

Judgment and Commitment

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

No. 2970-CR.—WASHINGTON DIVISION

UNITED STATES OF AMERICA,

—v.—

ISAAC A. TAFT.

On this 1st day of November, 1965 came the attorney for the government and the defendant appeared in person and by counsel, entered a plea of not guilty, requested trial by jury.

ON NOVEMBER 2, 1965: Trial by Jury

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty, and a verdict of guilty by the jury of the offense of violating the Internal Revenue Liquor Laws—Title 26, U. S. C., Section 7206(4), as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

Appendix "D"

Judgment and Commitment

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of three (3) years—defendant shall become eligible for parole at such time as the Board of Parole may determine as provided in Title 18, U. S. C., Section 4208(a)(2).

A True Copy, Teste:

SAMUEL A. HOWARD, Clerk

By /s/ WILLIAM A. KOPP, JR.
Deputy Clerk

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ JOHN D. LARKINS, JR.
United States District Judge

SAMUEL A. HOWARD
Clerk

APPENDIX "E"

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

WASHINGTON DIVISION

No. 2970-CR.

UNITED STATES OF AMERICA

v.

ISAAC A. TAFT

We, the Jury, find the defendant, Isaac A. Taft, Guilty.

Nov. 2nd, 1965.

JACK CARROLL WILLES
(Foreman)

A True Copy, Teste:

SAMUEL A. HOWARD, Clerk

By /s/ WILLIAM A. KOPP, JR.
Deputy Clerk

APPENDIX "F"

Request to Appeal

RECEIVED

11/8/65—AM

Isaac A. Taft
P. O. Box 646
Raleigh, N. C.

Honorable: Judge John D. Larkins
U. S. District Judge

Honorable: Judge

Please grant me Isaac A. Taft an appeal to the Circuit Court of Appeal and the smallest appearance bond possible. Your Honor I were afraid to plead not guilt and afraid to plead guilty. I wanted to plead guilted, but one of the A.B.C. office had talk with a lawyer in Greenville whom I tried to represent me on a guilty plead. According to his testimony he did not want the case because the officer were not in the case. But he wanted me to get a lots of time, and that while I had to have another to represent me on a not guilty plead I were just afraid both ways. I ask your mercy your Honor.

Sign

ISAAC TAFT

A True Copy, Teste:

SAMUEL A. HOWARD, Clerk

By /s/ WILLIAM A. KOPP, JR.
Deputy Clerk

APPENDIX "G"

Notice of Appeal

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

WASHINGTON DIVISION

No. 2978 CR

UNITED STATES

vs.

ISAAC A. TAFT

I

The name and address of the appellant: Isaac A. Taft, Greenville, North Carolina.

II

The appellant is represented by Beech & Pollock, Kinston, North Carolina.

III

Offense: The removal and concealment of sixty-six (66) gallons of non-tax paid whiskey.

Appendix "C"

Notice of Appeal

IV

The Judgment, dated November 2, 1965, is as follows: Confinement for a period of three years in the Federal Penitentiary.

V

The appellant is now released from custody on bond.

I, the above name appellant, hereby appeal to the United States Court of Appeals for the 4th Circuit from the above stated judgment.

This the 11th day of November, 1965

Isaac A. Taft
(Route 1 Box 18M, Greenville, N. C.)
/s/ Isaac A. Taft
Defendant

A True Copy, Teste:

Samuel A. Howard, Clerk

By /s/ William A. Kopp, Jr.
Deputy Clerk

APPENDIX "H"

Appearance Bond

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

No. .....

UNITED STATES OF AMERICA

v.

ISAAC A. TAFT

We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay to the United States of America the sum of Five Hundred dollars ($500.00).

The conditions of this bond are that the defendant Isaac A. Taft is to appear before the United States District Court for the Eastern District of North Carolina at Washington, and at such other places as the defendant may be required to appear, in accordance with any and all orders and directions relating to the defendant's appearance in the above entitled matter as may be given or issued by the commissioner or by the United States District Court for the Eastern District of N. C. or any other United States District Court to which the defendant may be removed or the cause transferred; that the defendant is not to depart the Eastern District of N. C., or the jurisdiction of any other United States District Court to which the defendant may

Appendix "H"

Appearance Bond

be removed or the cause transferred after he has appeared in such other district pursuant to the terms of this bond, except in accordance with such orders or warrants as may be issued by the Commissioner or the United States District Court for the Eastern District of N. C. or the United States District Court for such other district; that the defendant is to abide any judgment entered in such matter by surrendering himself to serve any sentence imposed and obeying any order or direction in connection with such judgment as the court imposing it may prescribe.

If the defendant appears as ordered and otherwise obeys and performs the foregoing conditions of this bond, then this bond is to be void, but if the defendant fails to obey or perform any of these conditions, payment of the amount of this bond shall be due forthwith. Forfeiture of this bond for any breach of its conditions may be declared by any United States District Court having cognizance of the above entitled matter at the time of such breach and if the bond is forfeited and if the forfeiture is not set aside or remitted, judgment may be entered upon motion in such United States District Court against each debtor jointly and severally for the amount above stated, together with interest and costs, and execution may be issued and payment secured as provided by the Federal Rules of Criminal Procedure and by other laws of the United States.

It is agreed and understood that this is a continuing bond which shall continue in full force and effect until such time as the undersigned are duly exonerated.

Appendix "H"

Appearance Bond

This bond is signed on this 10th day of November 1965 at New Bern, North Carolina.

Name of Defendant.
ISAAC A. TAFT

Address.
Rt. # 1, Box 18M,
Greenville, N. C.

Name of Surety.
J. B. FREEMAN

Address.
100 Riverside Dr.
Washington Park
Washington, N. C.

Signed and acknowledged before me this 10th day of November 1965

ELEANOR G. HOWARD
Eleanor G. Howard
Deputy Clerk

Approved:

ELEANOR G. HOWARD
Deputy Clerk,
U. S. District Court

Appendix "H"

Appearance Bond

JUSTIFICATION OF SURETIES

I, the undersigned surety, on oath say that I reside at Washington, N. C.; and that my net worth is the sum of Twenty Five Thousand Dollars ($25,000.00).

I further say that

(See Clerk of Superior Court of Beaufort County certificate attached.)

J. B. FREEMAN
J. B. Freeman
Surety

Sworn to and subscribed before me this 10th day of November 19— at New Bern, N. C.

ELEANOR G. HOWARD
Eleanor G. Howard
Deputy Clerk

A True Copy, Teste:

SAMUEL A. HOWARD, Clerk

By /s/ WILLIAM A. KOPP, JR.
Deputy Clerk

Appendix "H"

Appeal Bond

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

No. .....

UNITED STATES OF AMERICA

v.

ISAAC A. TAFT

APPEAL BOND

We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay to the United States of America the sum of Five Thousand dollars ($5,000.00).

The conditions of this bond are that the defendant Isaac A. Taft is to appear before the United States District Court for the Eastern District of North Carolina at Washington, and at such other places as the defendant may be required to appear, in accordance with any and all orders and directions relating to the defendant's appearance in the above entitled matter as may be given or issued by the commissioner or by the United States District Court for the Eastern District of N. C. or any other United States District Court to which the defendant may be removed or the cause transferred; that the defendant is not to depart the Eastern District of N. C., or the jurisdiction of any other United States District Court to which the defendant may be removed or the cause transferred after he has appeared in such other district pursuant to the terms of this bond, except in accordance with such orders or war-

Appendix "H"
Appeal Bond

rants as may be issued by the Commissioner or the United States District Court for the Eastern District of N. C. or the United States District Court for such other district; that the defendant is to abide any judgment entered in such matter by surrendering himself to serve any sentence imposed and obeying any order or direction in connection with such judgment as the court imposing it may prescribe.

If the defendant appears as ordered and otherwise obeys and performs the foregoing conditions of this bond, then this bond is to be void, but if the defendant fails to obey or perform any of these conditions, payment of the amount of this bond shall be due forthwith. Forfeiture of this bond for any breach of its conditions may be declared by any United States District Court having cognizance of the above entitled matter at the time of such breach and if the bond is forfeited and if the forfeiture is not set aside or remitted, judgment may be entered upon motion in such United States District Court against each debtor jointly and severally for the amount above stated, together with interest and costs, and execution may be issued and payment secured as provided by the Federal Rules of Criminal Procedure and by other laws of the United States.

It is agreed and understood that this is a continuing bond which shall continue in full force and effect until such time as the undersigned are duly exonerated.

This bond is signed on this 10th day of November 1965 at New Bern, North Carolina.

Name of Defendant.
ISAAC A. TAFT

Name of Surety.
J. B. FREEMAN

Appendix "H"

Appeal Bond

Signed and acknowledged before me this 10th day of November 1965

ELEANOR G. HOWARD
Eleanor G. Howard
Deputy Clerk

Approved:

ELEANOR G. HOWARD
Deputy Clerk,
U. S. Dist. Court

JUSTIFICATION OF SURETIES

I, the undersigned surety, on oath say that I reside at Washington, N. C.; and that my net worth is the sum of Twenty Five Thousand Dollars ($25,000.00).

I further say that

(See Clerk of Superior Court of Beaufort County certificate attached.)

J. B. FREEMAN
J. B. Freeman
Surety

Appendix "H"

Appeal Bond

Sworn to and subscribed before me this 10th day of November 19— at New Bern, N. C.

ELEANOR G. HOWARD
Eleanor G. Howard
Deputy Clerk

A True Copy, Teste:

SAMUEL A. HOWARD, Clerk

By /s/ WILLIAM A. KOPP, JR.
Deputy Clerk

Appendix "H"

Appeal Bond

(Emblem)

THE SUPERIOR COURT OF BEAUFORT COUNTY

WASHINGTON

NORTH CAROLINA

MRS. ADA M. TAYLOR
CLERK

TO THE CLERK OF THE FEDERAL COURT:

This is to certify that Mr. Jennings B. Freeman, Washington, North Carolina, is a Licensed Bail Bondsman and has License No. 64 which is registered in this office. I am also holding a deed of trust in the amount of $21,000. to secure his license.

This the 9th day of November, 1965.

ADA M. TAYLOR
Clerk of the Superior Court of
Beaufort County, North Carolina

APPENDIX "I"

(The following excerpts are from the Transcript of Evidence, as found on the pages indicated below.)

WILLIAM R. SPIGHT, Government Witness: Direct Examination—Pages 3 to 10.

"Q. Mr. Spight, directing your attention to Friday night on June 4, 1965, did you have an occasion to be in the vicinity of the residence of James Johnson? A. Yes, sir.

Q. Were there other officers with you at the time? A. Yes, sir.

Q. Will you name what other officers were with you? A. In the immediate vicinity was Investigator Ralph Ellis, Investigator P. H. Blettner and ABC Officer Don Taylor, there were other officers in the area.

Q. And where is this residence located? A. I am not too familiar with the area. It was identified to me as the Bruce Section of Pitt County. It seems to me it was about seven or eight miles generally west of Greenville.

Q. It was in Pitt County? A. Yes, sir. I do not generally work that area.

Q. Will you just in your own words tell us what if anything transpired on the evening which you were there? A. Shortly before ten p.m. that evening, ABC Officer Taylor and I were in a cornfield immediately to the rear of James Johnson's residence. This corn was about waist high in the part that we were concealed in.

The moonlight was very brilliant. You could generally see good except in shadows.

Appendix "I"

William R. Spight—for Government—Direct

Q. What was your approximate distance from the residence? A. At the nearest point about thirty-five steps from the back of the house.

Q. All right. A. And shortly after we got in this position to see, we could see lights around the back parts of this house and heard the sound of heavy cartons or cases being slid across the floor. It was also—

Mr. Scott: Objection.

The Court: Well, overruled.

A. It was also the sound of glass jugs or jars striking together and the very strong and unmistakable odor of non-tax paid whiskey. The wind was blowing directly from the direction of the house into our face.

At this time I could not see anyone but the noises were coming from the back portion of this house.

Q. Now, sir, how long did you stay in that position or vantage point? A. Well, sir, a few minutes later the lights were turned off and except for one in the front part of the house, I believe about 10:30 all of the lights were off and then at about eleven o'clock I believe it was that a 1957—anyway this car, a 1957 Chevrolet came from the direction of Greenville, North Carolina, and turned in at James Johnson's house and went down to the side of the house and got about even with the house, and the headlights were turned off.

The car was driven on to the extreme rear of the house with the parking lights on and one person got out. The parking lights were left on.

Appendix "I"

William R. Spight—for Government—Direct

At this time, ABC Officer Taylor and I went around to the right-hand side of this field and toward the road to the edge of a little field.

And there was a huge tree there. I imagine the thing was probably fifteen feet in diameter or circumference, a huge tree.

And we were about fifteen or twenty feet, I would say, from the corner of this room and from that room we could hear voices and could hear at least two people talking and hear these cartons being slid across the floor again and the glass striking together.

Q. At that time you could not identify anyone? A. Not at that time.

Q. All right, sir. A. So then at this time Officer Taylor and I went into the yard and to the front bumper of the car.

Q. Now, what car do you have reference to? A. This '57 Chevrolet. I was at the left-front bumper, Mr. Taylor was at the right-front. I was on the side immediately in front of the steering wheel.

Q. Is that the same motor vehicle that you had seen come from the direction of Greenville? A. Yes, sir.

Q. All right. A. Yes, sir. And from my position I saw Isaac Taft come out of the back room of this house, carrying a case of the size usually used to contain non-tax paid whiskey.

Mr. Scott: Objection.

The Court: Overruled.

A. Mr. Taft then went around the rear of the car to the passenger side and opened the door and leaned

over and set the case of whiskey in the car. At which time Officer Taylor called him by name and says, "Isaac, you are under arrest."

And I went through the car from the driver's side and also told him he was under arrest and we were federal officers. And the best way I could describe it then is he just more or less went berserk.

Mr. Scott: Did what?

The Witness: Went berserk.

A. He drug Mr. Taylor and I both a distance of twenty—at least twenty yards across the yard towards the road. He was flailing away with his forearms, and just struggling violently all over this yard.

And I believe we got tangled up in a bicycle in the yard and almost fell. And then Mr. Blettner and Mr. Ellis came up and the four of us placed him under arrest.

Q. Now, sir, did you at any time thereafter have an opportunity to examine this case which you saw him come out of the back door with and go into the car with? A. Yes, sir.

Q. What was the result of your examination? A. It contained non-tax paid whiskey. There were eight cases, forty eight gallons in the car. There were also in this back room of the house—there were three cases containing eighteen gallons. A total of sixty-six gallons in all.

Q. Now, how much did you say was in the car? A. Eight cases, forty-eight gallons.

Appendix "I"

William R. Spight—for Government—Direct

Q. Now, sir, did I understand you to say, Mr. Spight, that Mr. Ellis and Mr. Blettner which were members of the Alcohol and Tobacco Tax agency, they came and helped you restrain this defendant Taft? A. Yes, sir.

Q. Was he placed under arrest at that time? A. Well, he was placed under arrest by handcuffs being placed on him and he ceased struggling at that time.

Q. Was any more force used than was necessary to take him into custody and place him under arrest? A. No, I do not think so.

Q. Now, sir, did you have an occasion to see James Johnson on that evening? A. Yes, sir, at the moment we grabbed Isaac Taft at the automobile I heard running steps from this back room and this is a very old house. I will say it is a type that used to have a breezeway or covered porch so to speak, from the back room, connecting to the front part of the house, which was of a two-story design.

And went into the front room and James was sitting in a chair barefooted. I do not believe he had a shirt on. And James admitted that he was keeping the whiskey there.

Q. Well, now,— A. —in the house.

Q. —let me ask you this. Was he advised of his rights prior to your receiving any statements? A. Yes, sir. I did not advise him myself.

In fact, I did not place him under arrest.

Q. Were you present when he was advised of his rights? A. I do not believe so, Mr. Hollowell.

Q. All right. A. I was still out in the yard at the time.

Appendix "I"

William R. Spight—for Government—Cross.

Q. Your seizure of the whiskey constituted how much whiskey? A. Sixty-six gallons.

Q. And during the course of your investigation did you examine the containers in which it had been placed? A. Yes, sir."

* * * * *

WILLIAM R. SPIGHT, Government Witness: Cross Examination—Pages 16-19.

* * * * *

"Q. Now, Mr. Spight, you said that you smelled the odor of alcohol? A. Yes, sir.

Q. From behind the tree? A. No, sir.

Q. Or out in the cornfield? A. Yes, sir.

Q. Out in the cornfield? A. Yes, sir.

Q. Was any whiskey broken there? A. No, sir.

Q. Any jars or containers broken? A. Not that I know of until we broke them.

Q. Until you broke it. Did you smell it after you broke the jars or when did you smell it? A. I smelled it about ten o'clock, shortly after I got into the cornfield.

Q. Well, you know you can't smell whiskey in a jar closed up, do you not? A. Yes, sir, you can. Quite frequently.

Q. You can smell it at that distance? How many feet were you out in the cornfield from the house? A. About thirty-five paces.

Q. Thirty-five? A. Yes, sir.

Q. That was across the road, was it not, from the house? A. No, sir.

Q. The same side of the house? A. To the rear of the house.

Q. To the rear of the house, thirty-five steps? A. Yes, sir.

Q. It would be about one hundred and some feet? A. (The witness did not answer.)

Q. And you smelled the whiskey now that you say was enclosed in jars? A. Unmistakably and positively and without a doubt.

Q. For that distance? A. Yes.

Q. Do you know where the odor was coming from? A. From the direction of the wind I would say the odor came from this house.

Q. You have got a better nose than a bird dog, haven't you? A. No, sir.

Q. If you could smell it jarred up for that distance you could see at night, see through the darkness like an owl, couldn't you? A. No, sir. If I could have seen like that I might have been able to see Mr. Taft when he carried each case and put it in the car. I did not say I could see him.

Q. You did not say you saw him carry each case? A. Not until I got up to the front of the car, and I then saw him.

Q. You do not say you saw him drive the car? A. I did not say that I did."

• • • • •

Appendix "I"

P. H. Blettner—for Government—Direct

P. H. BLETTNER, Government Witness: Direct Examination—Pages 20 to 24.

* * * * *

"Q. And now, will you just in your own words tell the Court and jury what you observed and saw this evening? A. The evening was quite light as Mr. Spight has testified, due to the moonlight. We split up in two groups to move up to the rear of the home.

Mr. Spight and Mr. Taylor moved to the rear of the house. Investigator Ellis and I moved to the side and would be on the east side of the house. We had to go through some bushes and came into the back of a tobacco barn.

At approximately eleven o'clock, a 1957 red and white Chevrolet came into the yard, turned its headlights out and drove to the back of the yard. I could see individuals moving but could not determine who they were.

I could hear the sound of heavy objects bumping and cardboard boxes being opened. I heard Officer Taylor exclaim, 'All right, Isaac, you are under arrest.' I heard investigator Spight at that time say 'Federal agent, you are under arrest, Isaac.'

Q. Mr. Blettner, approximately what distance were you from these other two officers when you heard them say that at the time? A. I would say I was within fifteen or twenty yards, sir, of the house.

Q. All right, sir. Continue. A. And Investigator Ellis and I both then at that time ran forward. Isaac had dragged Officer Taylor and Investigator Spight approximately twenty yards to the rear of the auto-

mobile, from where they had started and at that time Investigator Ellis and I ran up and subdued Isaac and I took him in custody and put him up against the side of the house and put handcuffs on him."

* * * * *

Q. Now, sir, what transpired, Mr. Blettner, after he was taken into custody? A. I turned him over to Investigator Lan and I went into the house. I had seen liquor in the back of the automobile. And I found some in the house in the back room.

I then went into the forward part of the house and found Johnson sitting there with bare feet, with just a pair of trousers on.

I asked Johnson if he lived in that house and he stated that he did. And I placed Johnson under arrest and advised him of his rights, that he need not make any statement, and any statement he did make could be used in prosecution.

I also told him that he could have a lawyer at that time. I asked Johnson several questions. I said, 'Whose liquor is it?' He said, 'I get two dollars a case for storing it and all I can drink.' I asked him who actually the liquor belonged to. He said, 'I do not know who they are.'

Taft would not make any statement. He was also advised of his rights, in regard to making a statement and have a lawyer. And he did not make any statement whatsoever.

Q. Pursuant to your conversation with Johnson, was he placed under arrest? A. Yes, sir."

* * * * *

Appendix "I"

P. H. Blettner—for Government—Cross

P. H. BLETTNER, Government Witness: Cross Examination—Pages 28 to 30.

* * * * *

"Q. Now, how close were you to the house when the car drove up there? A. Approximately fifteen or twenty yards up behind a tobacco barn, sir.

Q. Fifteen or twenty yards? A. East side of the house.

Q. Well, did you see the big tree that Mr. Spight has told about, the big enormous tree there he hid back of? A. I know there was a large tree in the back yard, exactly where it is, I do not know.

Q. You don't know how far it is from the house? A. No, sir; I do not.

Q. Now, you smelled the whiskey out there in the field? A. No, sir. I did not. I was not at the field with them. We split up before that.

Q. Well, you were closer to the house than the field, weren't you? A. I was on the east side of the house, sir, the side, not to the rear.

Q. They were to the rear? A. That is correct.

Q. To the rear, and you were on the east side? Was that the front or side of the house? A. The side of the house, sir, towards Greenville.

Q. And the rear would have been to the south? A. To the rear of the house, the back, yes, sir.

Q. You were to the east and they were to the south? A. Yes, sir.

Q. You were about fifteen or twenty feet from the house? A. I was fifteen or twenty yards, sir.

Q. Yards? I see. I beg your pardon. You could not see well enough to make out any identity of any individual, could you? A. No, sir. I could not identify them.

Q. And you never—you did not smell any odor out there floating around in the air? A. No, sir, I did not."

* * * * * *

WALTER TAYLOR, Government Witness: Direct Examination—Pages 1 to 36.

"Q. Will you state your name and occupation for the record, please sir? A. Walter Taylor, ABC officer, Pitt County.

Q. And how long have you been employed in this capacity, Mr. Taylor? A. Ten years.

Q. Where do you live? A. Greenville.

Q. Greenville is your home? A. Yes, sir.

Q. Mr. Taylor, directing your attention to the night of June 4, 1965, would you relate to the Court where you were on this occasion? A. Behind the house of James Johnson, at the rear of James Johnson's house.

Q. Were others with you at this time? A. Yes, sir. Investigator Spight and myself were together. And the other officers was rounding the house the other way.

Q. Go ahead and tell us what you were doing as you were stationed there with Mr. Spight that had to do with the case. What you saw and what you heard, if anything, that has to do with the case. A. Well, at about eleven o'clock, this car came down number forty-

three, from towards Greenville and turned into this yard of James Johnson.

At the end of the yard the lights went out, just except the parking lights. They were still on. This car drove to the rear of James Johnson's house and stopped.

And Investigator Spight and myself were in the corn patch behind the house about thirty-five steps from the house.

Q. You were with Mr. Spight, the first one that testified? A. Yes, sir.

Q. You were in the same position he was? A. Yes, sir, we were both together.

Q. Go ahead and tell us where you were when the car came up? A. We were at the rear of the house when this car came up and stopped at the rear of the house.

And this person got out, and went in the door there and we could smell the odor of non-tax paid—the odor of whiskey coming from the house. And Investigator Spight and myself worked our way around so we could get up to the place.

And we could hear cases being—something being moved inside the house. And we could hear what sounded like jars hitting together. And Investigator Spight and myself worked ourselves up to the front of this automobile.

I was on the right side, Investigator Spight was on the left side. And at that time, Isaac Taft, whom I have known for about ten years, came out of this lighted doorway to the back of the car around to my

side of the car, with a case the size of half gallon fruit jars, and placed it in the front seat of the automobile.

At that time, I jumped from the front of the automobile and grabbed Isaac by his belt and put my light in his face and told him he was under arrest.

And Investigator Spight, he came through the front of the automobile. Anyway, he had a tussle there and he drug us several feet to the rear of the car. And finally, we got him under control and arrested him.

Q. Now, this car you are talking about was the 1957 Chevrolet Mr. Spight testified about? A. Yes, sir.

Q. Now, sir, you testified that you have been knowing or you have known Mr. Isaac Taft for about ten years, is that correct? A. Yes, sir.

Q. Have you seen him frequently over this period of time? A. Yes, I see him quite often.

Q. You readily recognize him when you see him, is that correct? A. Yes, sir. I have been acquainted with him for several years.

Q. Does he call you by name? A. He calls me Taylor.

Q. He calls you Taylor? A. Yes, sir.

Q. Mr. Taylor, you just testified that you saw Isaac Taft carrying out a cardboard case, which appeared to you to be a half gallon fruit jar case, is that correct? A. Yes, sir.

Q. Now, after he was placed under arrest did you have an occasion to check the cardboard box which was being placed in the car? A. Yes, sir. There was a total of eight cases of non-tax paid whiskey in the front and

the rear seat of the automobile. This particular case he was setting it in the front seat of the automobile. He had both front doors thrown open on the car.

He came around to my side and was setting the case of whiskey in the car when I told him he was under arrest.

Q. Did you examine the cases that were in the car? A. Yes, sir.

Q. Were they half gallon fruit jar cases? A. Yes, sir. Containing non-tax paid whiskey.

Q. Did you examine the contents of the cases? A. Yes, sir, I did.

Q. What was in them? A. Non-tax paid whiskey.

Q. You took it out and examined it? A. Yes, sir, and destroyed it.

Q. And helped destroy it? A. Yes, sir. There in the edge of the yard, yes, sir. There was three more cases in the room that—

Q. How did you destroy it, by breaking it? A. Yes, sir.

Q. All of the cases—I believe you testified, sir, eight cases which were in the car, were all of them filled with jars that had non-tax paid liquor in them? A. Yes, sir.

Q. Each and every jar was filled? A. Yes, sir.

Q. All right, sir.

Mr. Bass: No more questions.

Thank you, sir."

Appendix "I"

Walter Taylor—for Government—Cross

WALTER TAYLOR, Government Witness: Cross Examination—Pages 36 to 38.

"Q. Mr. Taylor, I would like to clarify two or three things here. You said I believe that you all were about one hundred and five feet from the house out in the corn patch when this car drove up? A. When the car drove off the highway into the yard we were in the corn patch.

Q. You said about thirty-five steps? A. From where we were, we worked ourselves on to the end of the corn row and from where the car stopped we were about thirty-five steps from him.

Q. Well, that would be about one hundred and five feet? A. Yes, sir.

Q. Now, you told the Court that you smelled the odor of alcohol or liquor, the odor of liquor coming from the house, is that correct? A. Yes, sir, I did.

Q. How far from the house were you at that time? A. Oh, maybe forty paces, maybe five more yards, about forty yards.

Q. About forty yards? A. Yes, sir.

Q. Now, you smelled that strong odor of alcohol did you? A. Yes, sir, we could smell it, or I could.

Q. Now, you say that that odor was coming from the house? A. The wind was blowing it from that direction.

Q. I did not ask you about the wind. I said you say it was coming from the house. A. It was coming from somewhere.

Appendix "I"

Walter Taylor—for Government—Cross

Q. You said from the house, didn't you? A. Yes, sir.

Q. You were telling this Court you were standing out there in the dark forty feet from the house and smelled alcohol and said it was coming from the house? A. We were facing the house and the odor was coming from that direction.

Q. I don't care but you said it was coming from the house. That is what you said. A. From that direction.

Mr. Bass: He was arguing with the witness.

Q. Now, you are taking that back and saying you did not say it was coming from the house? A. It was coming from the direction of the house.

Q. Now, you say coming from the direction of the house? A. We were facing the house, and it was coming from that direction.

Q. Now, you say coming from the direction of the house? A. We were facing the house, and it was coming from that direction.

Q. Now, were you close enough to see who was driving the car when it came up there and stopped? A. I could see a fellow of his height. I have been knowing him a long time. I would not swear it was him.

Q. All right. Do you know whose automobile it was? A. No, sir, I do not.

Q. You know it was not registered in his name, do you? A. Not that I know of.

Q. What? A. Not that I know of.

Mr. Scott: That is all."

* * * * *

Appendix "I"

William R. Spight—for Government—Direct
P. H. Blettner—for Government—Direct

WILLIAM R. SPIGHT, Government Witness: Direct Examination—Pages 10 and 11.

"Q. Your seizure of the whiskey constituted how much whiskey? A. Sixty-six gallons.

Q. And during the course of your investigation did you examine the containers in which it had been placed? A. Yes, sir.

Q. And what was the result of your examination? A. There were no stamps affixed to the containers to evidence the taxes had been determined or paid.

Q. And what became of the whiskey after the seizure? A. It was destroyed immediately after the seizure at 11:45 p.m., sir."

* * * * *

P. H. BLETTNER, Government Witness: Direct Examination—Page 24.

* * * * *

"Q. Did you in the course of your investigation examine the containers in which this whiskey had been placed? A. Yes, sir. And I also helped in destroying these containers.

Q. What was the result of your observation? A. There were no stamps attached to the immediate containers of the distilled spirits and the containers had distilled spirits. The containers did not have any stamps to denote that tax had been paid or determined."

* * * * *

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 331

ISAAC A. TAFT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) reported at 360 F. 2d 213.

JURISDICTION

The judgment of the court of appeals was entered on May 11, 1966. Mr. Chief Justice Warren extended the time for filing a petition for a writ of certiorari to July 9, 1966, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

227-046—66

QUESTION PRESENTED

Whether the destruction of glass jars, and the non-tax paid whiskey contained in them, immediately after the arrest of petitioner, infringed his rights.

STATUTES INVOLVED

26 U.S.C. 5609(a) provides as follows:

> In the case of seizure elsewhere than on premises qualified under this chapter of any unregistered still, distilling or fermenting equipment or apparatus, or distilling or fermenting material, for any offense involving forfeiture of the same, where it shall be impracticable to remove the same to a place of safe storage from the place where seized, the seizing officer is authorized to destroy the same. In the case of seizure, other than on premises qualified under this chapter or in transit thereto or therefrom, of any distilled spirits on which the tax has not been paid or determined, for any offense involving forfeiture of the same, the seizing officer is authorized to destroy the distilled spirits forthwith. Any destruction under this subsection shall be in the presence of at least one credible witness. The seizing officer shall make such report of said seizure and destruction and take such samples as the Secretary or his delegate may require.

General Statutes of North Carolina, section 18–6.1 provides as follows:

> All members of the State Highway Patrol and other State and local law enforcing officers

shall, whenever seizing any vehicle on account of the unlawful transportation of intoxicating beverages, or equipment or materials designed or intended for use in the manufacture of intoxicating liquor, or making arrests of persons on account of same, refer the cases to the State court having jurisdiction thereof, to be determined by such State court in accordance with the law of this State. Any such officer who shall, in violation of this section, refer such cases to courts of another jurisdiction, shall be guilty of misfeasance in office and subject to a fine of one hundred dollars ($100.00).

STATEMENT

Petitioner was convicted by a jury in the United States District Court for the Eastern District of North Carolina of removing, depositing and concealing non-tax paid whiskey in violation of 26 U.S.C. 7206(4). The court of appeals affirmed, *per curiam*.

The evidence showed that on the night of June 4, 1965, at the home of James Johnson near Greenville in Pitt County, North Carolina, petitioner was caught in the act of loading an automobile with cartons containing unstamped fruit jars filled with whiskey (Tr. 3–7). Petitioner was arrested by three federal agents and a Pitt County Alcoholic Beverage Control officer, Walter Taylor, who accompanied the federal officers. Two federal agents and Taylor testified without objection that, immediately after the arrest of petitioner and co-defendant Johnson, his brother-in-law, the fruit jars were examined, found to be without revenue

stamps and to contain distilled spirits (Tr. 8, 10, 24, 35, 36). They were thereupon destroyed on the spot. Counsel for petitioner made no request for the production of the jars or the whiskey in court, nor did he question any officer about the examination or destruction of the jars. Petitioner's defense, presented by the testimony of his brother-in-law who had pleaded guilty, was that a stranger known only as "Jesse" had left the whiskey, identified as such by Johnson, (and the automobile in which most of it was found) at Johnson's home for safekeeping for "a little while" (Tr. 44–50, 55).

ARGUMENT

In the court of appeals the petitioner for the first time contended that his constitutional rights to trial by jury, to confrontation of witnesses and to prepare his defense had been infringed by the destruction of the whiskey after his arrest. Petitioner, however, never challenged the fact that the substance in the fruit jars was whiskey. In fact the witness he called identified three of the cartons as three cases of whiskey and testified that his pay for keeping it was one jar to drink (Tr. 44). Had there been any question as to the nature of the liquid destroyed there would have been an issue of credibility on which the defense could have cross-examined and as to which the fact of destruction might have been considered for whatever worth a jury chose to attribute to it. Clearly, however, the destruction of the whiskey, which is authorized by statute, 26 U.S.C. 5609(a) *supra,* did not

bar the prosecution. *Burney* v. *United States,* 339 F. 2d 91 (C.A. 5); *Chandler* v. *United States,* 318 F. 2d 356 (C.A. 10).

Petitioner now urges for the first time that the destruction was illegal because it was not in the presence of a "credible witness" as required by 26 U.S.C. 5609(a). He argues that state agent Taylor was not a "credible witness" because, petitioner contends, under North Carolina Statute 18–6.1, Taylor was required to refer liquor violators to North Carolina courts for prosecution only under that State's laws. Section 18–6.1, however, applies only to arrests and seizures "on account of the unlawful transportation of intoxicating beverages, or equipment or materials" used in the manufacture of such liquor. Petitioner was not actually transporting intoxicating liquor when arrested. Moreover, the record does not suggest that it was agent Taylor who referred the case to the federal courts. Taylor was not in charge of the raid on Johnson's house; it was a "federal raid" (Pet. 8). Nor is it suggested that the North Carolina statute purports to prohibit a state officer from accompanying and assisting federal officers. But even assuming such assistance was improper under State law, it does not follow that Taylor was therefore a non-credible witness. Furthermore, two of the three federal agents who made the raid testified concerning the destruction of the liquor, and the petitioner does not contend that they were not credible witnesses within the meaning of Section 5609(a).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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